

07 NOV 2000



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In re Application of
KECK, et al.
Application No.: 09/601,997
PCT No.: PCT/US98/27942
Int. Filing Date: 18 December 1998
Priority Date: 19 December 1997
Attorney Docket No.: 14-020210US
For: NON-BACTERIAL CLONING IN
DELIVERY AND EXPRESSION OF
NUCLEIC ACIDS

DECISION ON PETITION

UNDER 37 CFR 1.137(b)

This is in response to applicant's, "Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)" filed 08 August 2000. Applicant has authorized deduction of the \$605.00 small entity petition fee from Deposit Account 50-0893.

BACKGROUND

On 18 December 1998, applicant filed international application PCT/US98/27942, which claimed priority of an earlier application filed 19 December 1997. A Demand for international preliminary examination, in which the United States was elected, was filed on 10 July 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 19 June 2000.

On 19 June 2000, the application became abandoned for failure to pay the basic national fee for a U.S. national stage entry application.

On 08 August 2000, applicant filed the present petition accompanied by a "Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning Filing Under 35 U.S.C. 371," authorization to charge Deposit Account No. 50-0893 the appropriate filing fees and the petition fee under 37 CFR 1.17(m), a declaration signed by the inventors, a verified statement claiming small entity status and a statement of assignment. Payment of the small entity surcharge of \$65.00 for providing an oath or declaration later than 30 months from the claimed

priority date was not included. However, authorization was given to charge Deposit Account 50-0893 any under payments associated with the present petition.

DISCUSSION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137© (where required).

With regard to Item (1), the proper response was the payment of the basic national fee. Applicant has authorized charging of this payment to Deposit Account No. 50-0893.

As to Item (2), applicant has authorized charging of the petition fee in the amount of \$605.00 to Deposit Account No. 50-0893.

With regard to Item (3), applicant's statement that, "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" satisfies the requirement of 37 CFR 1.137(b)(3).

As to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate.

A further review of the application papers shows that applicants have not submitted a proper declaration in that the enclosed declaration consists of one whole declaration and one page two of a second declaration. Applicant must provide one complete declaration with all of the inventors signatures or separately signed complete declarations.

CONCLUSION

For the reasons stated above, the petition for revival is GRANTED.

As authorized, \$65.00 will be deducted from Deposit Account 50-0893 for payment of the appropriate surcharge for providing the declaration later than 30 months from the priority date.

This application is being returned to the DO/EO/US for processing in accordance with this decision, namely, the mailing of a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905).



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